

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8859 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No @@

2. To be referred to the Reporter or not? No @@ 2

To be referred to the Reporter or not? No @@ 2.

To be referred to the Reporter or not? No @@ 2. T

be referred to the Reporter or not? No @@ 2. To be

referred to the Reporter or not? No @@ 2. To be ref

rred to the Reporter or not? No @@ 2. To be referre

to the Reporter or not? No @@ 2. To be referred to

the Reporter or not? No @@ 2. To be referred to the

Reporter or not? No @@ 2. To be referred to the Rep

rter or not? No @@ 2. To be referred to the Reporte

or not? No @@ 2. To be referred to the Reporter or

not? No @@ 2. To be referred to the Reporter or no

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

GARDEN SILK MILLS LTD

Versus

DY.COMMISSIONER OF INCOMETAX (ASSTT)

Appearance:

MR JP SHAH for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 10/12/98

ORAL JUDGEMENT (per R. Balia, J.)

The petitioner challenges notice (Annexure A) issued u/s 148 by the Deputy Commissioner, Income-tax (Assessment), Special Range, Surat dated 2.12.93 for the A.Y. 1988-89.

2. It is urged by lerned counsel for the petitioner that the notice has been issued beyond 4 years from the end of the relevant assessment year in respect of which the reassessment proceedings are initiated and it is not a case where the AO holds reason to believe that income has escaped assessment because of any failure on the part of the assessee who failed to file return his income u/s 139 or in pursuance of notice u/s 142 or 148, nor the AO has any reason to believe that such escapement of assessment is as a result of failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment for the assessment year in question. On these precincts it is urged that notice issued beyond the 4 years from the close of the assessment year in respect of which proceedings have been initiated are barred by time and on the date of issue of notice, the ITO had no jurisdiction to issue such notice on the basis of belief held by him. On demand, reasons which are required to be recorded u/s 148(2) before issuance of notice had been supplied to the assessee petitioner which have been filed along with the petition (Annexure F).

3. No reply has been filed to contest the facts stated in the petition. A perusal of the reasons goes to show that the AO nowhere connects his belief about alleged escapement of income from assessment with any failure on the part of the assessee to file his return u/s 139 or when called upon to do so or such escapement is a result of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment. On the contrary, the reasons recorded by the AO clearly discloses that assessee's claim for deduction of expenditure or depreciation was founded on particular premise which was accepted during the course of assessment and now the escapement from assessment is attributed to the fact that the premise on the basis of

which assessee has claimed deduction was not well-founded and it should have been considered otherwise.

4. The proviso to sec. 147 is clear in its expression in postulating that no proceedings for reassessment can be initiated after the expiry of 4 years from the end of the relevant assessment year unless the escapement of assessment is caused on account of failure on the part of the assessee either to furnish return or to disclose truly and fully all material facts. This being the case on facts of this case, it is abundantly clear that the notices issued on 2.12.93 are barred by time and notices issued thereafter cannot be sustained.

5. We may also notice from the documents furnished to us that while notice (Annex. A) bears the date of issue as 2.12.93, but the recording of reasons bears the date of 8.12.93. The requirement of law is that the reasons for initiating proceedings u/s 148 has to be recorded before issuance of notice and not after it. Learned Counsel for the revenue has tried to explain that there may be some clerical error in putting different dates on notice issued and the recording of reasons. Suffice it to say, as we have found on facts that proceedings initiated on 2.12.93 are otherwise barred by time and cannot be sustained, we do not dwell on this issue.

6. The petition therefore succeeds. The impugned notice (Annex. A) dated 2.12.93 is quashed. Rule is made absolute. There shall be no order as to costs.

(hn)